

STATES OF JERSEY



GOVERNANCE – A THINKPIECE (R.153/2019): EXECUTIVE RESPONSE AND GREFFIER OF THE STATES’ RESPONSE, WITH COMMENTS OF THE PUBLIC ACCOUNTS COMMITTEE

**Presented to the States on 27th February 2020
by the Public Accounts Committee**

STATES GREFFE

FOREWORD

In accordance with paragraphs 64–66 of P.56/2018, the [Code of Practice](#) for Engagement between ‘Scrutiny Panels and the Public Accounts Committee’ and ‘the Executive’ (February 2018) (as derived from the [Proceedings Code of Practice](#)), the Public Accounts Committee presents an Executive Response, together with a response from the Greffier of the States, to the (former) Comptroller and Auditor General’s (“C&AG”) Report entitled [Governance – A Thinkpiece \(R.153/2019\)](#), presented to the States on 18th December 2019). It sets out its comments on the former C&AG’s report and the responses received, below.

PAC Comments

Background

The former Comptroller and Auditor General (C&AG), Karen McConnell, published a report on [Governance – a Thinkpiece](#) in December 2019. The report does not contain any findings and recommendations, but rather it highlights areas of interest, to stimulate debate by the Executive and Non-Ministerial Departments (“NMDs”). The report draws on findings made in previous reports to the States Assembly on corporate governance, internal control and value for money.

The PAC considers that good governance is of increased importance during a period of unparalleled change. The matters under consideration cannot be contemplated in isolation, so when making changes to one area such as the constitution of government structures or the interaction between the States Assembly, the Government and the Executive, the impact on other areas should be considered and understood.

The Executive Response to the Thinkpiece report was shared in draft form with the Non-Ministerial Departments, although they have not contributed to its contents, and was received by the PAC on 10 February 2020. The Greffier of the States also responded to relevant parts of the report on the same day. Both the Executive Response and comments provided by the Greffier are attached to this paper. The PAC is pleased to note the current C&AG, Lynn Pamment, endorses her predecessor’s report and will follow up on several aspects of it.

The PAC, conscious that failures in governance are often at the heart of poor quality public services, welcomes the positive responses from the Executive and the States Greffe to the former C&AG’s final report, which reflect the support of initiatives to secure best value and improved services for the Public. It also welcomes the Executive’s development of a governance framework which will be advanced in partnership with all Accountable Officers, including those for the Non-Ministerial Departments, throughout 2020.

However, the PAC is concerned that the review of the governance framework for the States of Jersey has not proceeded seamlessly. The role of Principal Accountable Officer has been established, but individual Ministers remain corporations sole, and the PAC is concerned that this disparity was not envisaged when the Machinery of Government (Miscellaneous Amendments) (Jersey) Law 2018 ([P.1/2018](#)) was [debated](#) and [adopted](#). It is therefore difficult to predict how to bring forward proposals to reform governance.

The PAC sets out its comments on aspects of the former C&AG’s concerns and the responses received, below:

Constitutional Framework

The former C&AG proposed a fundamental review of key constitutional legislation for Jersey to ensure clear, consistent, comprehensive and unambiguous accountabilities across the organisation. The PAC notes that a governance framework will be advanced in partnership with all Accountable Officers, including those for the Non-Ministerial Departments. However, the PAC is concerned that the Government, whilst involving NMDs, does not extend involvement to the whole of the public sector (for example, arm's-length organisations) and does not have robust timescales for its development.

The key pieces of legislation which underpin Ministerial Government are –

- the [States of Jersey Law 2005](#);
- the [Employment of States of Jersey Employees \(Jersey\) Law 2005](#); and
- the [Public Finances \(Jersey\) Law 2019](#).

The PAC notes that the Council of Ministers has commissioned a review of the Employment of States of Jersey Employees (Jersey) Law 2005, and that statutory provisions will be brought forward for consideration later in 2020. The PAC urges the Executive to address the points made in the former C&AG's report on the [Role and Operation of the States Employment Board \(R.35/2019, presented 29th March 2019\)](#), so that the States Employment Board ("SEB") can demonstrate that it is exercising effective oversight of human resources across the States, and the under-resourcing of human resources can be rectified. It also considers that any changes to the statutory framework of the Jersey Appointments Commission ("JAC") should not negatively impact on its independence.

The PAC acknowledges that the Treasurer of the States has responsibilities that, in contrast to the Chief Executive, extend beyond the Government of Jersey, with wide powers to report directly to the States Assembly. Legislation prohibits directing the Treasurer in the work he undertakes, and also indicates that he can only be removed from his post by the States Assembly, rather than by the Principal Accounting Officer (the Chief Executive). However, the Treasurer's important statutory protections are not reflected in his contract of employment, and the PAC considers that they should be.

Whilst the PAC welcomes the new principles-based [Public Finances Manual](#) which underpins the [Public Finances \(Jersey\) Law 2019](#), it concurs with the former C&AG that significant work is needed to develop high quality, accessible corporate standards as part of the wider governance review. The PAC acknowledges the Greffier of the States' comments that a fundamental review of the constitutional legislation would be a 'considerable undertaking', and hopes that his offer of assisting the Executive in such an endeavour is accepted.

Conduct

The PAC concurs with the former C&AG's view that good governance is underpinned by the highest standards of conduct of all those in public service, and a comprehensive framework, which includes clear codes of conduct, reinforces core values. It welcomes the Executive's move to review the Employment of States of Jersey Employees (Jersey) Law 2005. It also notes the efforts of Team Jersey in refreshing the values and behaviours framework, that will help shape the organisation's culture and drive positive workplace behaviours. However, the PAC urges the Executive to ensure the significant

‘organisational culture’ change is embedded throughout the organisation, and that each employee is encouraged to embody the core values. Furthermore, it notes that the legislation to be reviewed only applies to States of Jersey employees and does not extend to employees of other public bodies. The PAC hopes to see more evidence of developing a comprehensive framework to incorporate all those in public service.

States Assembly (Legislature)

The PAC emphasises the need to recognise the States Assembly as more than a legislative body. The Assembly also scrutinises policy and legislative proposals (acting through Scrutiny Panels), provides resources to the Executive, and it holds the Executive to account for the use of those resources (through the PAC). The PAC concurs with the former C&AG that good governance requires that the Assembly, Scrutiny Panels and the Public Accounts Committee have the skills and resources to undertake those functions appropriately.

The PAC is pleased to note that the [2020-23 Government Plan](#), which was approved by the Assembly in November 2019, includes a significant additional investment in the scrutiny function. It welcomes the Greffier of the States’ indication that his team would be happy to support the Scrutiny Liaison Committee in reviewing the organisation of the work of Panels and ensuring that the delineation between the roles of the Panels and the Public Accounts Committee is appropriately recognised. Furthermore, the PAC notes that the Ministerial Support Unit (“MSU”) would be pleased to work with Scrutiny Officers as part of a joint programme of activities, which would enable colleagues in MSU and the States Greffe to share expertise and learning. The PAC would like to see concrete proposals as to how that would work in practice.

In response to the C&AG’s suggestion that formal written drafting instructions for all major legislation should be made available to Scrutiny, the PAC agrees. It notes that there were no such formal instructions for the [Public Finances \(Jersey\) Law 2019](#), however this was a notable exception to the norm. It concurs with the Greffier of the States that Ministerial Decisions to instruct the Legislative Drafting Office should only be exempted from disclosure under the [Freedom of Information \(Jersey\) Law 2011](#) in exceptional circumstances. The PAC was also pleased to note that discussions are taking place between the Greffier and the Principal Legislative Drafter to overcome resource constraints, so that comparisons of existing and proposed legislation are made available to Scrutiny and published routinely alongside legislative *projets*.

Interaction between the States Assembly and Government

The PAC agrees with the former C&AG’s opinion that Assembly Members outside of the Government could become conflicted as a result of their roles on both Policy Development Boards and Scrutiny Panels. The PAC emphasises that the integrity of the scrutiny process is of critical importance to the machinery of government and welcomes the measures being put in place by the Executive. The PAC also echoes the Greffier of the States’ comments that more clarity in the policy-making process can only be of benefit to effective scrutiny and the law drafting process.

The PAC is particularly pleased to note that the ‘tracker’, used by the Executive to chart the progress of implementing C&AG and PAC recommendations throughout departments, is being expanded during 2020 to monitor all Scrutiny Panel recommendations. The database will enable regular reporting to individual Panels on progress, in a similar way to that of PAC. The Executive should be mindful, however,

that quantitative reporting of performance against strategic objectives or accepted recommendations should be validated.

Accountability to the States Assembly

As the former C&AG pointed out in her [Review of the Jersey Innovation Fund](#) in 2017, it is important that States Members are provided with relevant and high quality information when asked to take decisions. In that report she detailed incidents where officers concluded that it was not practicable to comply with the operational terms of reference which underpinned a proposition adopted by the States Assembly. Officers proceeded on a different basis without either reporting back to or seeking the endorsement of the States Assembly to adopting a more workable solution. The PAC concurs that this conduct is entirely inappropriate and fosters distrust between the Government and the States Assembly. As the PAC's own [Report on the Innovation Fund \(April 2018\)](#) stated, elected members must be confident that propositions adopted by the Assembly are implemented in accordance with the expectations envisaged by that Assembly. Where compliance with the proposition becomes difficult to follow in practice, the officers should ensure that those difficulties are transmitted to the Assembly, and its consent to a different approach should be sought.

The Executive

The PAC agrees with the C&AG's assertion that the adoption of the term 'Government of Jersey' distinguishes it more clearly from the role of the States Assembly. However, it notes that she was concerned that there should be consistent reinforcement of the boundary of the Government of Jersey and respect for the States bodies that are outside it. The launch of the 'Government of Jersey' brand, and governance structures specifically for 'government', while no doubt beneficial in many ways, have had unintended adverse consequences for Non-Ministerial Departments and have caused confusion. For example, the Accountable Officer letter issued to the Greffier of the States on 23 December 2019 was headed "Accountability and Governance within the Government of Jersey", despite the States Greffe being a Non-Ministerial Department, distinct from, and independent of, the Government of Jersey. The PAC hopes that the C&AG's [Report on non-Ministerial Departments](#), published in December 2019, will help ensure that there is greater clarity in this area, and that the appropriate relationship between NMDs and the Government is well understood. The report includes a recommendation to develop a high-level statement regarding the overall relationship between the Government and NMDs, which has been accepted in the [Executive Response](#) to that report.

Bodies acting at arm's length ("ALOs")

The former C&AG reiterated her support for clear common principles to be developed for governance and accountability of ALOs. Her recent report on the [Remuneration of Board Members](#) (October 2019) recommended the establishment of a high-profile board for the oversight of the relationship with shareholder companies, statutory bodies and funded bodies. She recommended that this new board should determine standards of corporate governance for these independent bodies and monitor compliance.

Whilst welcoming the proposals by the Executive and Treasurer on their plans to establish a Strategic Oversight Board in the first quarter of 2020, the PAC is concerned that it would appear to cover only a sub-set of the entities referred to in the Thinkpiece report, and may not be in the best position to take forward the development of common

principles. The establishment of a Board does not by itself address the areas that the C&AG drew attention to. Additionally, given that the membership of the board is described as ‘chaired by the Chief Executive with senior membership from across Government’, the PAC is concerned that a number of the entities outside of Government may not have their views considered when developing common principles. In that regard, the PAC would welcome proposals from the Executive on how these concerns will be addressed.

Independent inspection of Public Services

Another concern of the former C&AG was that independent inspectorates should be used consistently as an essential part of the process of improving and providing assurance of key public services. She noted that some opportunities for independent inspection are missed, including that of justice functions delivered independently or at arms-length. The PAC welcomes the Government’s commitment to improvements to address any gaps in the statutory footing for inspections, and prescribed periods between inspections, which will be recommended to Ministers as the relevant Laws are updated. It noted that independent inspection of States-funded bodies and organisations should provide assurance regarding public services and welcomed the Executive’s offer to work with the Crown Officers to develop a statutory basis for comprehensive and consistent independent inspection. It would like to see specific proposals with a robust timescale to take this forward.

Public audit

The PAC welcomes the Executive’s response to the former C&AG’s suggestions for improvement on legislation pertaining to the Office of the C&AG. However, notwithstanding the Executive proposals for discussion in 2020 ‘*with the Minister for Treasury and Resources, the C&AG and the PAC, with changes brought to the Assembly amendments if all parties are able to reach a consensus on the direction of travel*’, the PAC would like to see a proposed timetable for action.

Conclusion

The PAC agrees with the former C&AG’s observations that good public services are underpinned by good governance – effective, transparent processes for making and implementing decisions. The best-performing organisations continually strive to improve their governance arrangements, and the PAC welcomes the Executive’s and the Greffier of the States’ contributions to improve the process. However, it cautions against complacency and will engage with NMDs and the Chief Executive in the coming months, to ensure that, in step with the current C&AG’s audit plan, it can continue to assess progress on all the areas raised in the former C&AG’s report throughout 2020.

Senator S.C. Ferguson

Chairman, Public Accounts Committee

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Public Accounts Committee
States Greffe
Morier House
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10 February 2020

COMMENTS ON THE COMPTROLLER AND AUDITOR GENERAL'S PUBLICATION –
“GOVERNANCE – A THINKPIECE”

Dear Senator Ferguson

Please find below comments in response to the Comptroller and Auditor General's (C&AG) publication 'Governance – A Thinkpiece', issued on 18 December 2019. I note that the Public Accounts Committee (PAC) has invited Non-Ministerial Departments and other bodies acting at arm's length to provide their own feedback and comments on the 'Thinkpiece'. This letter has been shared in draft with the Non-Ministerial Departments, but they have not contributed to its contents.

Unlike other reports by the C&AG, the 'Thinkpiece' does not focus on a particular business area or theme, but draws on previous reports and offers wide-ranging observations from the C&AG's experience over the last seven years. The C&AG's 'Thinkpiece' provides helpful 'areas to consider' and food for thought about how governance arrangements can be improved.

The C&AG's notes that 'significant improvements in governance... have [been] made and... are planned' that will improve 'governance arrangements within Jersey [that] have evolved over time and are complex.' The C&AG observes that the Jersey constitutional context is different from other jurisdictions and that good governance is not a static or absolute concept. Good governance is specific to a particular organisation or jurisdiction and necessitates continuous review and improvement to keep up with new ways of working and changes to business practices. Strong governance also often drives better organisational culture, decision making and corporate learning, which can result in better value and customer-focused public services for Islanders.

The following paragraphs of this letter comment on each of the themes covered by the C&AG 'Thinkpiece'.

Conduct

The development of comprehensive arrangements for establishing, promoting and securing compliance with appropriate standards of conduct in public life for all those in the public service is a critical part of good governance. These standards should be further developed to cover conduct in all aspects of public life and public service. As noted by the C&AG, these arrangements should have a firm statutory underpinning. Therefore, as part of updating the Employment of the States of Jersey Employees (Jersey) Law 2005, the necessary statutory provisions will be brought forward for consideration by the Council of Ministers later in 2020.

Good conduct by colleagues across the organisation is also reinforced by creating and embedding a positive workplace culture. The Committee will be aware of the significant investment in our employees as part of the Team Jersey programme of work, and the recent refresh of the values and behaviours framework, that will help shape our organisation's culture and drive positive workplace behaviours (a high-level illustration of the core values and behaviours is attached at Appendix A).

Constitutional framework

The C&AG proposes a fundamental review of key constitutional legislation for Jersey to ensure clear, consistent, comprehensive and unambiguous accountabilities across the organisation. Whilst the Public Finances (Jersey) Law 2019 has been updated recently, and the States of Jersey Law 2005 has been subject to several reviews since coming into force, the Employment of the States of Jersey Employees (Jersey) Law 2005 has never been reviewed comprehensively. As the C&AG notes, the Council of Ministers have now commissioned a complete review of the Employment of the States of Jersey Employees (Jersey) Law 2005. This review includes addressing the points regarding legislation made in the C&AG's recent report on the Role and Operation of the States Employment Board (March 2019). Proposals are expected to be brought forward for consideration by the Council of Ministers during 2020.

The Legislature (States Assembly)

The C&AG notes that good governance requires that the Assembly, Scrutiny Panels and the Public Accounts Committee have the skills and resources to undertake their respective functions appropriately. Whilst in part this is a matter for politicians, public servants can assist where appropriate in providing better support to Members. The Greffier of the States has reviewed its operating model and organisational structures, with a view to supporting employees to better understand how to support political and legislative responsibilities that Members need to discharge. Furthermore, the Ministerial Support Unit (MSU) would be pleased to work with Scrutiny Officers as part of a joint programme of activities, which would enable colleagues in MSU and the States Greffe to share expertise and learning. It is anticipated that this could lead to more efficient and effective working practices, provide Scrutiny with greater clarity around the government's annual work programme and promote early engagement with the Scrutiny process. If such an approach was accepted, the outcome could see better support for Scrutiny Panels to

plan and prioritise their work programme and reviews; as well as support government to provide timely and comprehensive information to Panels.

The C&AG observes that as more government initiatives cut across traditional departmental responsibilities than previously would have been the case, this will impact on how Scrutiny might work in the future, as Scrutiny Panels have traditionally been organised around departmental functions. Whilst it is a matter for Panels and the Assembly to determine how they are organised, there is a commitment from officers to support the enhancement of greater transparency and certainty around the government programme of work, as outlined in the Government Plan, which in turn will help Panels to plan their work better and manage any organisational complexities associated with cross-cutting initiatives.

Interaction between the States Assembly and the Government

Scrutiny process

The C&AG notes that Assembly members outside of the Government could become conflicted as a result of their roles on both Policy Development Boards and Scrutiny Panels. The integrity of the Scrutiny process is of critical importance to the machinery of government and I understand the Chief Minister is considering the matters raised by the C&AG.

The C&AG also proposes a number of changes to government processes that would support Scrutiny Panels to discharge their responsibilities in a more effective manner. The following bullet points respond to the C&AG comments in this area:

- **Green paper/white paper methodology** - the government currently makes use of the 'green paper' and 'white paper' public consultation methodology, however there is an intention to explore the extension of this principle to a more structured use of 'early direction' (green) and 'formal decision' (white) papers. Early direction could, in turn, trigger the opportunity for timely engagement with Scrutiny Panels in advance of any formal scrutiny (as provided for by Standing Orders).
- **Written law drafting instructions** - work has been undertaken in partnership with the Legislative Drafting Office to provide training for officers in the development of formal written drafting instructions. This training has been very well received and there continues to be demand for more of this specialist skills development. Further collaboration with colleagues in the Legislative Drafting Office to build on this helpful training through the development of standards would be welcome.
- **Comparisons of existing and proposed legislation** - there is potential to work with colleagues in the Legislative Drafting Office on the provision of marked-up versions of legislative amendments and side-by-side comparisons of draft legislation.
- **Process to determine whether Scrutiny review is needed** - the Government Plan outlines a commitment to enhancing transparency and certainty around the government programme of work, which will help Panels to decide where they wish to focus their efforts and to plan their work load. Furthermore, the development of processes to clarify which items should expect to be scrutinised, and in what form, would assist in planning the

overall programme of policy development and implementation. Ideally, this work could consider the scrutiny of both ministerial and 'backbencher' propositions.

Accountability of the executive to the legislature

The 'Thinkpiece' considers a number of areas where the executive can improve its accountability to the legislature. These areas include:

- **Provision of performance information** - the C&AG has noted positive progress regarding the enhancements and improvements that have been made to both financial and performance reporting within the Annual Report and Accounts. In addition, the Jersey Performance Framework has now been published, which is another major step forward in measuring the progress that Jersey makes towards achieving sustainable wellbeing. More work is required to develop public service performance measures, and this will be taken forward during 2020. As you are also aware, a new data base tracker system has been developed to capture how government responds to recommendations made by the PAC and C&AG; in order to monitor the implementation of actions that it has agreed to take forward. This database is used by the Executive Leadership Team and Government Departments to track corporate improvements, share lessons across the organisation and improve governance arrangements as a whole.
- **Provision of timely information to the Assembly and Scrutiny Panels** - initial responses to reports and requests for information are responded to within the terms of the 'Code of Practice for Engagement between Scrutiny Panels and the PAC and 'the Executive'. The C&AG and PAC 'tracker' is being expanded in the first half of 2020 to monitor Scrutiny Panel recommendations of which there are over 200 and will include all new recommendations moving forward. The database will enable regular reporting to individual Panels on progress, in a similar way to that of PAC.
- **Implementing Assembly decisions** - the C&AG expresses concerns that more could be done to consistently inform the States Assembly when officers advise that an approach agreed within a Proposition is not practical or needs to be changed. Advice to Ministers would usually be that the Assembly should be informed when it is necessary to take an approach that differs from that requested in a Proposition. A further extension to the C&AG and PAC 'tracker' is also being explored, which will record and monitor the implementation of all States decisions; in order to address the concerns raised by the C&AG.
- **Independent inspection of public services** - independent inspectorates should be used consistently as an essential part of the process of improving and providing assurance of key public services. In the 'Thinkpiece', the C&AG uses examples to illustrate her observation that some opportunities for independent inspection are missed, including justice functions delivered independently or at arms-length. The prison service has been consistently inspected by the Crown Inspectorate for many years, and the police service are now once again engaged with the Crown Inspectorate. The Crown have only recently re-established a fire inspectorate and the fire service is expected to participate in these inspections in the future. In recent years, the Jersey Care Commission has been established, which is a significant step forward in independent inspection of care homes

and children's social services. The remit of the Jersey Care Commission is due to be expanded to other care settings over the coming years. Improvements to address any gaps in the statutory footing for inspections, and prescribed periods between inspections, will be recommended to Ministers as the relevant laws are updated.

In addition, there is an opportunity to consider independent inspection of States-funded bodies and organisations outside the Government of Jersey to drive improvement and provide assurance regarding public services. In her report, the C&AG welcomes the recent Ofsted inspection of the Jersey Family Court Advisory Service but laments the lack of a statutory footing for this inspection. The C&AG also highlights the gaps in the coverage of Jersey services by Her Majesty's Criminal Justice Inspectorates¹ (those gaps being in relation to the prosecution and probation inspectorates) and recommends that consideration should be given to adopting a consistent and comprehensive approach to statutory inspection. Policy officers would be pleased to work with the Crown Officers to develop a statutory basis for comprehensive and consistent independent inspection.

The Executive (Government)

The C&AG notes that the adoption of the term 'Government of Jersey' distinguishes it more clearly from the role of the States Assembly, and that the designation of the Chief Executive as Principal Accountable Officer supports better accountability throughout the organisation and strengthens good governance within the Executive.

However, in her report, the C&AG also observes that there could be greater clarity around the responsibilities of individual ministers in the context of revised departmental structures. A report is due to be published to the Assembly regarding the respective responsibilities of Ministers and Assistant Ministers, which will provide clear lines of accountability between Ministers and Departments for all functions within a Minister's portfolio. However, the Chief Minister may consider further changes, where appropriate, to reflect "One Government" transformation, at some point in the future. It should be noted that Part 4 of the Machinery of Government (Miscellaneous Amendments) (Jersey) Law 2018, as decided by the Assembly in 2018 but not yet brought into force, continues the requirement in Article 30A of the States of Jersey Law 2005 for such a clear list to be published by the Chief Minister.

The C&AG's recent report on the Non-Ministerial Departments (December 2019) includes helpful recommendations regarding the relationship between the Government of Jersey and the Non-Ministerial Departments. These recommendations will be taken forward, including the agreement of a high-level statement regarding the overall relationship between the Government and Non-Ministerial Departments and to clarify the applicability of different corporate arrangements.

In order to further strengthen the overall governance arrangements, a review of the current governance framework for the public sector is being undertaken, which is anticipated to be completed in an initial form during 2020, including democratic oversight where appropriate. The

¹ <https://www.justiceinspectorates.gov.uk/>

C&AG has welcomed this work and the governance framework will be advanced in partnership with all Accountable Officers, including those for the Non-Ministerial Departments.

The C&AG also welcomes the new principles-based Public Finances Manual but suggests that more work is needed to develop high quality, accessible corporate standards as part of the wider governance review. Apart from the Public Finances Manual, other principles-based policies and procedures are being developed to improve the governance of corporate functions. The current Public Finances Manual is centred around financial expenditure and as such much of the 'as is' procurement activity is referenced within it. This will be enhanced through the work of the Governance, Performance and Planning function within Commercial Services, which, once established will lead to enhanced corporate standards and controls.

Similarly, improvements in the governance standards for Information Management to reflect best practice and compliance with the statutory obligations already set out in the Data Protection (Jersey) Law 2018 will flow from the creation of an Information Management Governance function within Modernisation and Digital during 2020, and the work of the Cyber Security Programme, to voluntarily adopt best practice from international standards such as ISO27001.

Work to update the people management Codes of Practice and policies is already underway within People & Corporate Services. This will be accelerated in 2020 alongside the review of the Employment of the States of Jersey Employees (Jersey) Law 2005 (including the statutory underpinning for Codes of Practice, Accounting Officer responsibilities and the Jersey Appointments Commission). Statutory enforceable regulations from the Jersey Appointments Commission will replace non-statutory guidance.

Bodies acting at arm's length, their accountability and officers making decisions independently

The C&AG reported on the operation of bodies acting at arm's length, whether as companies controlled by the States or bodies substantially funded by and economically dependent on States funding in a number of her previous reports. Whilst some differences in governance arrangements for independent bodies may be justifiable, as noted by the C&AG, there would be merit in adopting clear common principles for governance and accountability. The C&AG also noted that there is a risk that where bodies operate at arm's length there is a disparity of knowledge and expertise between the arm's length bodies and those responsible for their oversight. The C&AG's recent report on the Remuneration of Board Members (October 2019) recommended the establishment of a high-profile board for the oversight of the relationship with shareholder companies, statutory bodies and funded bodies. The C&AG also recommended that this new board should determine standards of corporate governance for these independent bodies and monitor compliance.

The Chief Executive and Treasurer of the States/Director General of Treasury and Exchequer's response to the C&AG's report on Remuneration of Boards (October 2019) outlines plans to establish an officer strategic oversight board in the first quarter of 2020 and work is currently underway to develop its Terms of Reference. The work of the new board is, therefore, expected to include both the adoption of, where appropriate, clear common principles of governance and a

review of arrangements in the light of those principles. The board will be chaired by the Chief Executive with senior membership from across government to ensure a partnership approach that aligns with the strategic direction of those bodies that it will oversee. The board will bring together colleagues from across government that are responsible for the oversight of relationships with bodies at arm's length to build a consistent approach to oversight arrangements.

Complaints

The C&AG's notes that 'establishing effective mechanisms for receiving, considering and resolving complaints from the public, staff and other stakeholders promotes a learning culture, reinforces a commitment to ethical behaviour and facilitates continuous improvement.' In order to support corporate learning and identify opportunities for improvement, in 2019 the customer feedback policy was updated and a new Customer Feedback Management System was implemented. This system is accessible to all Islanders online, and feedback can be received and recorded by colleagues at the first point of contact. The feedback policy seeks not only to invite customer complaints, but also any compliments or feedback that can result in service improvement. This forms part of the wider Customer Strategy, which is expected to be published in the first quarter of 2020. A private briefing will be scheduled with the PAC to discuss.

For those complaints that cannot be resolved by the organisation, the C&AG notes that the establishment of a Public Services Ombudsman with wide powers would send an important message about transparent and accountable public services that embrace feedback as part of a commitment to improve. Following a recent public consultation, legislative proposals are expected to be developed for consideration by the Council of Ministers during 2020. The Government Plan 2020-2023 provides for an Ombudsman to start work in 2021.

Officers are aware that the C&AG is preparing a report on Handling and Learning of Complaints, which will be published in early 2020.

Public audit

The C&AG notes that Jersey is in a uniquely strong position relative to the other Crown Dependencies in its establishment of the Office of the Comptroller and Auditor General to fulfil a public audit function. The C&AG also expresses that in her view, 'Jersey has up to date, appropriate public audit legislation that meets international standards.'

However, the C&AG also asks the Government to consider:

- Legislative amendments to ensure that, whilst maintaining adequate scrutiny of the governance and use of resources of the Office of the Comptroller and Auditor General, there is no actual or perceived accountability to the executive branch of government.
- Legislative amendments to transfer the duty for appointment of the external auditors of all public bodies (other than companies) to the Comptroller and Auditor General.

In 2020, these matters will be discussed with the Minister for Treasury and Resources, the C&AG and the PAC, with changes brought to the Assembly if all parties are able to reach a consensus on the direction of travel.

Finally, the C&AG considers what additional support the Office of the Comptroller and Auditor General could provide to the PAC should the resources allocated to it be reviewed. The C&AG provides important support to the PAC; however, this is a matter for the C&AG to discuss with the PAC directly. It should be noted that arrangements for Non-Ministerial States Bodies to request resources a part of the Government Plan process are set out within the Public Finances (Jersey) Law 2019. The Minister for Treasury and Resources and Treasurer of the States are willing to contribute to these discussions if they consider that it would be helpful.

I note that the Committee intends to hold a series of hearings on the governance issues raised in this report with witnesses from within and outside the government. I look forward to discussing with you some of the issues highlighted above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Charlie Parker', with a stylized flourish at the end.

Charlie Parker
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Appendix A – Our Values Framework



**BE
RESPECTFUL**

We care about people as individuals and show respect for their rights, views and feelings

**BETTER
TOGETHER**

We share knowledge and expertise, valuing the benefits of working together

**ALWAYS
IMPROVING**

We are continuously developing ourselves and our services to be the best they can be for Jersey

**CUSTOMER
FOCUSED**

We are passionate about making Jersey a better place to live and work for everyone

**WE
DELIVER**

We are proud of Jersey as a place and are passionate about shaping and delivering great public services

From Mark Egan, Greffier of the States of Jersey

10 February 2020

Response to C&AG Governance 'Thinkpiece'

Scrutiny:

- **A4** Enhanced support for Scrutiny Panels, including through investment in development of staff and drawing on external expertise.

The 2020-23 Government Plan, which was approved by the Assembly in November 2019, includes a significant additional investment in the scrutiny function. This increase delivered in full the request for £1.1m funding for the scrutiny function made by the then Chairmen's Committee to the Privileges and Procedures Committee in April 2019. The Greffe is in the process of recruiting four new Research and Project Officers to work for scrutiny and review panels. In addition, the budget for specialist advice has been more than doubled to £210,000.

In addition to staff development activity provided centrally by the States HR function, Greffe staff have had access to training and development opportunities provided by the Commonwealth Parliamentary Association, ad hoc opportunities to learn about parliamentary administration in the UK and other jurisdictions, and various conferences and networks of British Isles parliamentary staff. The Greffe's senior leadership team has recently agreed to enhance the development opportunities we offer to staff, including by arranging for colleagues to spend time working in other parliamentary bodies.

- **A5** Review of the organisation of the work of Scrutiny Panels and the Public Accounts Committee:
 - in response to an increased focus by the Government of Jersey on cross-cutting initiatives and the outcomes for citizens; and
 - to reinforce the different focus of Scrutiny Panels and the Public Accounts Committee.

I and my team would be happy to support the Scrutiny Liaison Committee in reviewing the organisation of the work of panels and ensuring that the delineation between the roles of the panels and the Public Accounts Committee is appropriately recognised.

From my perspective, Jersey is well placed to ensure that panels have the procedural flexibility to tackle cross-cutting work. The remits of scrutiny panels relate to subjects or themes, rather than precisely track ministerial remits as in the UK. A legislative or policy proposal may be reviewed by more than one panel, ensuring that the different dimensions of an issue can be appropriately scrutinised. Review panels also provide a quick way of establishing a mechanism to consider cross-cutting matters, such as Brexit or care of children.

- **A26** Resources to allow the Comptroller and Auditor General to provide enhanced support to the Public Accounts Committee in preparing briefings in advance of hearings, drafting potential questions and drafting Committee reports.

The additional resources referred to in my response to A4 also relate to the Public Accounts Committee. I will seek to meet the Comptroller and Auditor General and the Assistant Greffier (Committees and Panels) shortly to discuss what support she believes the Committee requires and how to deliver it.

- **A6** Clear, agreed criteria for preparation of ‘Green Papers’ and ‘White Papers’ to facilitate early scrutiny.

This is principally a matter for Government. However, more clarity in the policy-making process can only be of benefit to effective scrutiny and the law drafting process.

- **A7** Formal, written drafting instructions for all major legislation available to Scrutiny.

My understanding is that written drafting instructions are routinely made available to scrutiny. The C&AG refers to the absence of formal instructions for the draft Finance (Jersey) Law 2019, but I believe that this was exceptional rather than the norm. In my view, there should be more transparency in this area. I note that ministerial decisions to instruct the Legislative Drafting Office are often exempted from disclosure under the Freedom of Information Law: I am unpersuaded that this is ever necessary.

- **A8** Comprehensive comparisons of existing and proposed legislation with reasons for proposed changes available to Scrutiny.

Such comparisons may already be made available on request. There is a case for such comparisons to be published routinely alongside legislative projects, particularly where draft legislation simply amends existing legislation. There are resource constraints with producing meaningful comparisons, but this is an area which I am discussing with the Principal Legislative Drafter to see what can be achieved with new technology.

- **A9** A structured process to determine whether Scrutiny Panel review of propositions is needed.

This is principally a matter for the Scrutiny Liaison Committee to address. However, I note that the Committee has recently brought more rigour to the consideration by panels of draft legislation, ensuring that panels now routinely consider whether or not to scrutinise draft legislation.

I was previously involved in discussions with the then Chairmen's Committee, PPC and the Council of Ministers about changing Standing Orders to require all propositions to be referred to a scrutiny panel after lodging, so that the panel has the opportunity to report on a proposition before it is debated in the Assembly. Members expressed concerns about whether the scrutiny function was adequately resourced for this work, but I will revisit this matter once the additional resourcing we are now providing beds in.

The interaction between the States Assembly and the Government:

- **A16** Prioritisation of completion of the Government of Jersey review of the governance framework, having regard to the different accountability arrangements for, and consulting with, Non-Ministerial Departments.

From my perspective, the review of the governance framework for the States of Jersey has proceeded in a somewhat piecemeal fashion. The current position, whereby a powerful new role of Principal Accountable Officer has been established, but individual Ministers remain corporations sole, was not one which was ever envisaged when the Machinery of Government (Miscellaneous Amendments) (Jersey) Law 2018 was debated and adopted. It is difficult to say with confidence what the present Assembly thinks the governance framework for the States should be, or what steps it expects to be taken next to reform governance, if any. I think this makes completion of a review, and presumably implementation of recommendations arising from that review, rather difficult to predict.

- **A17** Consistent reinforcement of the boundary of the Government of Jersey and respect for the States bodies that are outside it.

The launch of the 'Government of Jersey' brand, and governance structures specifically for 'government', while no doubt beneficial in many ways, have had unintended adverse consequences for non-ministerial departments. The changes have caused confusion, uncertainty and disquiet amongst staff. Having said that, the Greffe's constitutional position has been respected when the extension of government branding and policy to my department has been challenged. I am hopeful that the C&AG's recent report on non-ministerial departments will help ensure that there is greater clarity in this area and the appropriate relationship between the Greffe and the government is well understood across the public sector.

- **A21** Issuing of appropriate, updated Accountable Officer letters for Non-Ministerial Departments.

I was issued with such a letter on 23 December 2019. I note that it is headed "Accountability and Governance within the Government of Jersey".

I wish to comment on two other recommendations which relate to my remit:

- **A3** A fundamental review of the key constitutional legislation for Jersey to ensure clear, consistent, comprehensive and unambiguous accountabilities: this strikes me as quite a considerable undertaking, but I would be happy to assist should the Government wish to initiate such a review.
- **A11** Agreed and observed principles for the circumstances when it is necessary to report back to the States Assembly or seek its consent for an approach other than that set out in an adopted Proposition: I think this is very important. I have seen a number of examples of propositions which have been adopted by the States, but which have not been implemented or where implementation followed a different path to the course originally required by the Assembly. This undermines the Assembly's constitutional position and trust in democratic politics.

I would be happy to speak to the Committee on any of these matters.